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SUBJECT: COMMERCIAL LAW DEVELOPMENT PROGRAM LAYS GROUNDWORK
FOR PARTNERSHIP WITH UAE ON COMMERCIAL LEGAL REFORM

¶1. (U) Summary: Staff from the Department of Commerce's Commercial Law Development Program (CLDP) visited the UAE in September to gather information and establish the groundwork for future cooperation with the UAEG on issues of commercial legal reform. Econoff and the CLDP team met with a number of UAE officials and attorneys in Abu Dhabi and Dubai and had productive brainstorming sessions. The team conveyed CLDP's goal of working with partner countries to improve the legal, regulatory, and commercial environment, with the long-term objective of preparing each country for MEFTA. UAE officials were enthusiastic about the program and identified potential areas of cooperation including offering training to judges and arbitration center staffs in an effort to increase their knowledge of commercial topics. End summary.

MEPI and TIFA process provides framework for cooperation

¶2. (U) CLDP will be working in the region under the auspices of the U.S. Middle East Partnership Initiative (MEPI) and will focus on providing technical assistance to improve the legal, judicial, and regulatory environments. The program will also target bilateral needs in areas such as judicial reform and information technology with the near-term objective of assisting the UAEG prepare for possible FTA negotiations with the United States. Accordingly, their first meeting was with Khalid Al Bustani at the Ministry of Finance and Industry, who serves as the senior working-level

coordinator for the Trade Investment Framework Agreement (TIFA) process. Al Bustani expressed his support of the CLDP program and noted particular interest in regional programs over bilateral ones. Recognizing that the UAE may be entering into FTA negotiations with the U.S. in the near future, he felt that regional programs were more appropriate at this time.

Agency Law: Informed Debate Would Assist Reform Efforts

¶3. (U) UAE officials recognize that the existing agency law is one of the key areas of concern for the U.S. in moving toward an FTA. In a meeting with officials from the Ministry of Economy and Commerce, Abdulla Ahmed Al Saleh noted that the ministry believes an open and free market benefits the nation's economy, but he acknowledged that vocal lobbies are working to protect their interests. He opined that his government needs to convince consumers that changing the agency law is in their best interest, thus energizing them to participate in an informed debate with those advocating the status quo. He added that without such a debate, it would be difficult to pass the necessary reform.

¶4. (U) In a discussion of this issue with officials from the Abu Dhabi Chamber of Commerce, an official with the Chamber's Arbitration Center stated that the legal structure is sufficient to encourage investment, but in many cases, U.S. companies do not understand the structure and therefore do not invest.

¶5. (U) Comment: Although it is true that many small and medium sized businesses may not understand the procedures for conducting business in the UAE, there are valid concerns regarding the current laws that inhibit many businesses from investing. One of these obstacles is the 51-49 local majority ownership issue and the de-facto permanency of a relationship between a U.S. company and its UAE agent. If a US company signs an agreement with a UAE company and registers the relationship, the UAE company can continue renewing the relationship with the UAEG, even after the term of the contract has expired and without approval from the U.S. company. Thus, in order for the U.S. company to continue to do business in the UAE, the company must continue to work through the original agent, even if the agent is not performing satisfactorily. End comment.

Ascension to the New York Convention Will Aid Arbitration

¶6. (U) An area CLDP identified as a prospective area of cooperation is in the realm of arbitration and adjudication. CLDP met with representatives of the Abu Dhabi Chamber of Commerce and an independent arbitration center in Dubai to discuss the potential for resolution of disputes through alternative dispute resolution (ADR). Comment: Although the practice of ADR is growing, arbitration as a means of voluntarily resolving disputes has not garnered widespread acceptance in the UAE. By law, companies may choose to handle disputes in international arbitration centers, but UAE courts are not obligated to enforce foreign arbitration awards. End comment.

¶7. (U) The legal advisor in the Ministry of Economy and Commerce informed Econoff and the CLDP team that the Ministry has drafted a new arbitration law. The draft law is currently being reviewed by the Ministry of Justice and will be forwarded to the National Council for approval. Although he would not explain specifics of the law, he noted that this law addresses the provisions of the New York Convention regarding arbitration enforcement. Comment: Presently, the UAE is not a signatory to the New York Convention. End comment.

Need for Judicial Training

18. (U) In a candid and energized discussion with four local attorneys, it was apparent that one of the most needed areas of reform is that of commercial judicial training. According to the attorneys, there is no separate court structure for commercial cases, and many of the judges have no training or expertise in UAE commercial law. This results in procedural confusion and rulings that are at times in opposition to the law. The attorneys felt the problem was two-fold: the lack of a specific commercial judicial sector mmercial disputes involving foreign parties tend to come before the civil courts in the federal system d a lack of judicial expertise. Regarding the latter, the attorneys noted that many judges come to UAE from Egypt to serve as a judge for three or four years, and have no specific training in UAE law. They also explained that one can become a judge in the UAE without ever having practiced law as an attorney. The system allows students in law school to elect to become judges, and thus there are many young judges on the bench with no experience and very little legal training. The attorneys were enthusiastic about CLDP assistance in this regard, and they suggested university exchanges and offering commercial training to judges, with the possible long-term goal of developing a separate commercial judicial sector.

19. (U) CLDP had meetings in Dubai at the Judicial Training Institute and the Dubai International Arbitration Center, reported septel.

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